

ADM File No 2003-62

>>> "Gail Rodwan" <[Rodwan@sado.org](mailto:Rodwan@sado.org)> 11/09/04 08:34AM >>>

Dear Mr. Davis:

This comment is directed to the proposed revision of the Michigan Rules of Professional Conduct. I noticed that there is no proposed change to MRPC 8.2(a), the rule governing false statements by lawyers regarding judges and other legal officials.

That rule embodies the "actual malice" test of *New York Times v. Sullivan*, 376 US 254 (1964). However, in *In re Chmura*, 461 Mich 517 (2000), the Michigan Supreme Court said that it was adopting an objective version of the *New York Times* test. Under the objective version, the question is not whether a lawyer makes a statement s/he know to be false, but whether a lawyer makes a statement that a reasonably prudent lawyer would know to be false.

Under the proposed rules, a new paragraph has been added to the Comment to Rule 8.2, citing the *Chmura* case for "additional guidance on 'political speech' during judicial campaigns." That comment seems wholly inadequate. I suggest that in order to comply with *Chmura*, Rule 8.2(a) should be revised to say, "A lawyer shall not make a statement that a reasonably prudent lawyer would know to be false," etc.

I occasionally teach Professional Responsibility at Wayne State University Law School, and I want to be sure that I am teaching my students the correct test under Rule 8.2(a).

I appreciate this opportunity to comment on the proposed rule changes.

Very truly yours,

Gail Rodwan

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